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10/668,142	09/24/2003	Amit Singhal	0026-0047	2802

44989 7590 03/06/2007  
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EXAMINER
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PYO, MONICA M

ART UNIT	PAPER NUMBER
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2161

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/668,142	<b>Applicant(s)</b> SINGHAL ET AL.	
	<b>Examiner</b> Monica M. Pyo	<b>Art Unit</b> 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 12-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is responsive to the Amendment filed 12/20/2006.
2. Claims 1-41 are currently pending in this application. In response to the Restriction Requirement, applicant elected Group I, claims 1-11 to be examined. Group II, claims 12-41 are withdrawn with traverse.
3. In the Amendment filed 12/20/2006, claims 1 and 9-11 are independent claims. Claims 1-11 are rejected.

#### ***Election/Restrictions***

4. Applicant argues that the combination claims 34 and 40 should be examined with the elected subcombination group I (claims 1-11) because the combination claims includes features that are similar to features recited in claims 1 and 2. However, the examiner disagrees with this argument. Since the combination claims 34 and 40 do not require the specific limitations of the subcombination claims 1 and 2 (i.e. the omission of details of the claimed subcombination in the combination claim is evidence that the combination does not rely upon the specific limitations of the subcombination for its patentability) and the subcombination has separate utility, the inventions I and II are distinct and restriction is proper. See MPEP 806.05 (c)(ii). The requirement is still deemed proper and is therefore made FINAL. The non-elected invention claims 12-41 should be canceled in view of expediting the prosecution.

#### ***Drawings***

5. Applicant's explanation regarding the Drawings objections made in a prior Office Action is persuasive. Therefore, the Drawing objections made in a prior Office Action are withdrawn.

***Claim Objections***

6. Applicant's explanation regarding the Claim Objections made in a prior Office Action is persuasive. Therefore, the Claim Objections made in a prior Office Action are withdrawn.

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Regarding Claim 3, this claim recites the limitation "when the query is not included in the predetermined list of commercial query patterns" (in lines 2-3). There is insufficient antecedent basis for this claim limitation. The Examiner considered suggested figure 5 and paragraph [0060] of specification. The paragraph [0060] discloses, "the final list of commercial query patterns" rather than "predetermined list of commercial query patterns" as recited in the claim 3. The Examiner suggests changing the phrase "predetermined list" to the phrase "the final list" to overcome the Claim Objections.

***Claim Rejections - 35 USC § 101***

8. Applicant's explanation regarding the 35 U.S.C. 101 rejections for claim 10 is persuasive. Thus, the 35 U.S.C. 101 rejection made in a prior Office Action for claim 10 is withdrawn.

Regarding claims 9 and 11, these claims are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to

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whether the claim is directed merely to an environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C 101.

9. Regarding claim 9, this claim recites "A system for processing...", which appears to be software system. This limitation appears to be non-statutory because it lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Applicants are suggested to amend the claim to disclose a limitation of "a memory" or "a processor" after the preamble "... comprising:" to include physical articles or objects to constitute a machine or a manufacture in order to overcome the above 101 rejection.

10. Regarding claim 11, this claim appears to be non-statutory because the "A tangibly-embodied computer-readable medium" as used herein can take the form of carrier waves.

Applicants' Specification, paragraph [0027], discloses computer readable medium to be a signal (carrier waves): "A computer-readable medium may be defined as one or more memory devices and/or carrier waves."

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, *per se*, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101.

See Interim Guidelines page 55, section (c) **Electro-Magnetic Signals**.

Applicants are suggested to amend the term "computer-readable medium" to "computer-readable storage medium" to include only volatile and non-volatile media in order to overcome the above 101 rejection.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1 and 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0220912 by Fain et al. (hereinafter Fain) in view of U.S. Patent Application Publication No. 2005/0027670 by Petropoulos (hereinafter Petropoulos).

Regarding Claims 1, 9 and 11, Fain discloses a method for processing a query, comprising:

- A) **receiving a query**, as a query submitted by a user (Fain: [0012 & 0019]);
- C) **processing the query in a first manner when the query is determined to be a non-commercial query**, as a first processing of treating all queries as non-commercial queries (Fain: [0024, 0048 & 0080]); and
- D) **processing the query in a second, different manner when the query is determined to be a commercial query**, as a filtering out process to sort out commercial queries (Fain: [0024, 0050 and 0080]).

Fain does not explicitly disclose:

**B) determining whether the query is a commercial query or a non-commercial query;**

However, Petropoulos discloses:

**B) determining whether the query is a commercial query or a non-commercial query,** as the query is determined to be non-commercial or commercial (Petropoulos: [0071]);

It would have been obvious to a person with ordinary skill in the art at the time of invention to apply the search engine to identify the submitted query as a commercial or a non-commercial query of Petropoulos in the Fain's top-down categorization approach in the search engine. Skilled artisan would have been motivated to combine the Petropoulos' teaching of identifying commercial or non-commercial queries in the search engine to return more useful results of Fain to better find a listing of best matching web documents (Petropoulos: [0002 & 0004]).

Regarding Claim 5, Fain and Petropoulos disclose the method wherein the processing the query in a first manner includes:

- retrieving one or more documents relating to the query (Fain: [0079]), and
- scoring the one or more documents based at least in part on a first set of criteria (Fain: [0078, 0084 and 0087]).

Regarding Claim 6, Fain and Petropoulos disclose the method wherein the processing the query in a second, different manner includes:

- retrieving the one or more documents relating to the query (Fain: [0079]) and (Petropoulos: [0071]), and
- scoring the one or more documents based at least in part on a second, different set of criteria (Fain: [0078, 0084 and 0087]).

Regarding Claim 7, Fain and Petropoulos disclose the method wherein the determining includes:

- determining whether the query is a commercial query or a non-commercial query based at least in part on one or more attributes of documents that match the query (Fain: [0012, 0019, 0046 & 0078]) and (Petropoulos: [0071]).

Regarding Claim 8, Fain discloses the method wherein the determining includes:

- determining whether the query is a commercial query or a non-commercial query based at least in part on user-supplied data regarding the query or documents that match the query (Fain: [0078-0079]) and (Petropoulos: [0071]).

Regarding Claim 10, Fain discloses a server comprising:

- A). a memory configured to store instructions**, as a recordable data storage medium (Fain: [0082]) ; and
- B) a processor configured to execute the instructions to:**
  - **receive a query**, as a query submitted by a user (Fain: [0012 & 0019])



- **process the query based at least in part on whether the query is identified as commercial or non-commercial**, as a process of sorting out commercial queries from queries (Fain: [0019, 0024, 0048 & 0080]).

Fain does not explicitly disclose:

- **identify the query as commercial or non-commercial**,

However, Petropoulos discloses:

- **identify the query as commercial or non-commercial**, as the query is determined to be non-commercial or commercial (Petropoulos: [0071]);

It would have been obvious to a person with ordinary skill in the art at the time of invention to apply the search engine to identify the submitted query as a commercial or a non-commercial query of Petropoulos in the Fain's top-down categorization approach in the search engine. Skilled artisan would have been motivated to combine the Petropoulos' teaching of identifying commercial or non-commercial queries in the search engine to return more useful results of Fain to better find a listing of best matching web documents (Petropoulos: [0002 & 0004]).

13. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fain in view of Petropoulos, and further in view of U.S. Patent Application Publication No. 2005/0050045 by Taira et al. (hereinafter Taira).

Regarding Claim 2, Fain and Petropoulos disclose the method wherein the determining includes:

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- determining whether the query is included in a predetermined list of commercial (Fain: [0012, 0019]) and (Petropoulos: [0071]), and
- identifying the query as a commercial query when the query is included in the predetermined list of commercial (Fain:[0012 & 0019]) and (Petropoulos: [0071]).

Fain and Petropoulos do not explicitly disclose:

- query patterns;

However, Taira discloses:

- query patterns (Taira: [0328]).

It would have been obvious to a person with ordinary skill in the art at the time of invention to apply the query pattern of Taira in the search engine to identify the submitted query as a commercial or a non-commercial query of Petropoulos, and in the Fain's top-down categorization approach in the search engine. Skilled artisan would have been motivated to combine the Taira's teaching of utilizing the query pattern in the Petropoulos' teaching of identifying commercial or non-commercial queries, and in the search engine to return more useful results of Fain to satisfy the user with the more accurate search result (Taira: [0014]).

Regarding Claim 3, Fain and Petropoulos and Taira disclose the method wherein the determining further includes:

- determining, when the query is not included in the predetermined list of commercial query patterns, whether the query relates to at least one commercial

- query pattern in the predetermined list of commercial query patterns (Fain: [0012, 0019 & 0057]) and (Petropoulos: [0071]) and (Taira: [0328]),
- identifying the query as a commercial query when the query relates to at least one commercial query pattern in the predetermined list of commercial query patterns (Fain: [0012, 0019 & 0057]) and (Petropoulos: [0071]) and (Taira: [0328]), and
  - identifying the query as a non-commercial query when the query is unrelated to the predetermined list of commercial query patterns (Fain: [0019 & 0050]) and (Petropoulos: [0071]) and (Taira: [0328]).

Regarding Claim 4, Fain and Petropoulos and Taira disclose the method wherein the determining whether the query relates to at least one commercial query pattern in the predetermined list of commercial query patterns includes:

- determining whether the query relates to at least one commercial query pattern based at least in part on at least one of a use of stemming, an identification of one or more synonyms, an identification of one or more related words, and an identification of a category or classification (Fain: [0019, 0051, 0052]) and (Petropoulos: [0071]).

#### ***Response to Arguments***

14. Applicant's arguments, see Remarks, filed 12/20/2006, with respect to claims 1 and 2 have been fully considered and are persuasive. The prior Office Action has been withdrawn.

*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica M. Pyo whose telephone number is 571-272-8192. The examiner can normally be reached on Mon-Fri 6:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu, Mofiz can be reached on 575-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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